

REMARKS

The first Action final rejection is respectfully traversed. Applicants again submit that the claims are non-obvious from the prior art. The PTO is not justified in ignoring applicants' allegations of improved results. Case law authority in support thereof appears below:

In re Marzocchi, 169 USPQ 367, 369-70 (CCPA 1971):

... it is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement; otherwise, there would be no need for the applicant to support his presumptively accurate disclosure.

From In re Costello, 178 USPQ 290, 92:

There is no justification for simply ignoring appellant's allegations of unexpected results.

From Ex parte Johnson, 40 USPQ 576:

The examiner makes no showing... [that applicant's statement is incorrect] and this tribunal is not so expert in the art as to disagree with applicant's sworn description and agree with the examiner without cause.

From In re Andrews 168 USPQ 360, 66:

We cannot take judicial notice of... the impossibility of what appellant asserts... . Accordingly, we reverse the rejection which, in our view, ignored the thrust of appellant's application in this regard.

^BFrom Ex parte Ilgen and Michl, 172 USPQ 316, 17:

As the main opinion notes, appellant's specification asserts an improved result...
. The examiner erred in failing to show cause for not giving effect to this assertion.

From Ex parte Leonard, 187 USPQ 122, 123-24:

..., we fail to find any suggestion from the collective teachings before us that... the combination... as claimed... [would have the results alleged]. This is a totally new and surprising beneficial result,... . Such unexpected results must, of course, be taken fully into account,... [citations omitted]... .

We should note that in so holding..., we rely heavily on appellant's representations... . We are aware of no good reason to challenge appellant's presumptively accurate disclosure... .

The claimed sequence indeed provides improved results and it is important to mill the fish while it is frozen rather than after it has been thawed as taught by Katoh. Applicants' specification so states, and the PTO has **absolutely no justification** for ignoring applicants' presumptively accurate disclosure.

Applicants request that rejections based on Katoh (all of the rejections) be withdrawn as they are not justified.

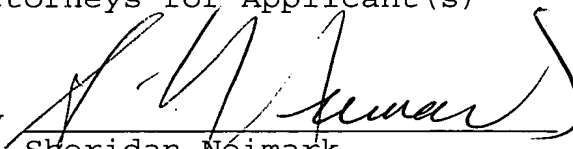
Nevertheless, to even better define over the prior art, claim 7 has been amended above to add features not previously claimed. There can be no question that the cited and applied prior art does not show these additional features.

Favorable reconsideration and allowance are
respectfully urged.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By


Sheridan Neimark

Registration No. 20,520

SN:jec

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

\itt1\amd\

